

EX PARTE OR LATE FILED

ORIGINAL

FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P.

2001 PENNSYLVANIA AVENUE, N.W.

SUITE 400

WASHINGTON, D. C. 20006-1851

TELEPHONE (202) 659-3494

CLIFFORD M. HARRINGTON

(202) 775-3541

FACSIMILE

(202) 296-6518

December 18, 1998

INTERNET

charrington@fwclz.com

RECEIVED

DEC 18 1998

**HAND DELIVERY**

Ms. Magalie Roman Salas

Secretary

Federal Communications Commission

1919 M Street, N.W., Room 222

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

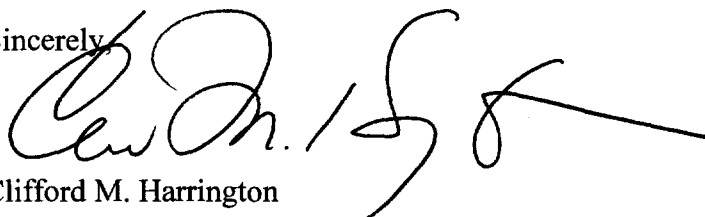
RE: In the Matter of Carriage of the Transmissions of Digital Television Broadcast  
Stations, Amendments to Part 76 of the Commission's Rules

CC Docket No. 98-120

Dear Ms. Salas:

On behalf of Univision Communications Inc., I today sent the attached presentation to the Commission staff indicated below. I am submitting two copies of this notice and the attachment in accordance with Section 1.1206(b)(1) of the Commission's Rules.

Sincerely,

  
Clifford M. Harrington

cc: Commissioner Harold Furchgott-Roth  
Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Gloria Tristani  
Kathryn Brown, Chief of Staff  
Deborah Lathen, Chief, Cable Services Bureau  
Charles F. Dolan  
Tara V. Corvo, Esq.

No. of Copies rec'd 0+2  
List A B C D E

UNIVISION COMMUNICATIONS INC.  
1999 AVENUE OF THE STARS, SUITE 300  
LOS ANGELES, CALIFORNIA 90077  
310-556-7678  
310-556-7697 FAX

HENRY G. CISNEROS  
PRESIDENT

RECEIVED

DEC 18 1998

FEDERAL COMMUNICATIONS COMMISSION  
GENERAL SECRETARY

December 16, 1998



The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street Northwest  
Room 814  
Washington, DC 20554

Dear Chairman Kennard:

I am writing to you on behalf of Univision Communications Inc., operator of America's most-watched Spanish-language television network. Among the thirteen full power television stations indirectly owned and operated by Univision is WXTV, which transmits to the large Spanish-speaking population in the New York City ADI from an antenna atop the Empire State Building.

This letter responds to the November 25, 1998 letter sent to you by Charles F. Dolan, Chairman of Cablevision, who is obviously seeking to influence the Commission's resolution of an ongoing cable carriage dispute between Cablevision and Univision. This dispute relates to Cablevision's continued refusal, in violation of the Communications Act and the Commission's Rules, to honor WXTV's election of its over-the-air channel, Channel 41, as its cable must-carry channel on the many Cablevision systems located throughout the New York television market. As Mr. Dolan concedes, Cablevision serves roughly 2.64 million subscribers in the New York ADI. Thus, Cablevision acts as the gatekeeper to a substantial portion of WXTV's local audience.

The matters raised in Mr. Dolan's letter are presently the subject of a contested proceeding pending before the Commission's Cable Services Bureau, a fact of which Mr. Dolan surely is aware. It is disappointing indeed that Mr. Dolan and Cablevision would seek to have you intercede in this matter, rather than await the dispassionate review of the facts and the law by the Commission's expert staff pursuant to delegated authority. Moreover, it is unfortunate that Mr. Dolan's correspondence omits key facts which are necessary to place this issue in proper context. I am confident that once these facts are considered, the strength of Univision's position will be apparent.

Univision's complaint centers on one fundamental issue: Cablevision's intransigent refusal to honor WXTV's election to be carried on Channel 41, its over-the-air channel. Contrary to Mr. Dolan's recollection, WXTV's election of carriage on Channel 41 dates to 1993, not 1996. WXTV demanded carriage on Channel 41 in WXTV's initial must carry election to

Cablevision -- an election that was made over five years ago. Univision's election of carriage on Channel 41 was *repeated* in WXTV's second round of must carry election letters in 1996. Despite the fact that Univision has had, under the Communications Act and the Commission's Rules, an absolute *right* to on-channel carriage since 1993, to this day, Cablevision has neither complied with the law nor sought permission from the Commission to disregard its must-carry obligations. Instead, Cablevision has chosen to flout the law by merely refusing to carry WXTV on Channel 41 of its systems, correctly recognizing the expense, difficulties, and delay that Univision would face in seeking to enforce Cablevision's compliance with the law.

Most of Mr. Dolan's letter is devoted to an extensive diatribe attacking the Commission's rule permitting the broadcaster to elect cable carriage on its over-the-air channel. Unfortunately, Mr. Dolan's analysis overlooks one key fact: WXTV's right to elect carriage on Channel 41 is established by Section 614(b)(6) of the Communications Act of 1934, as amended:

(6) Channel positioning. - **Each signal** carried in fulfillment of the carriage obligations of a cable operator under this section **shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air**, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, **at the election of the station**, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

47 U.S.C. § 534 (emphasis added). This provision was adopted by Congress as part of Public Law 102-385, the Cable Television Consumer Protection and Competition Act of 1992, approved October 5, 1992, 106 Stat. 1460, §4.

The right of a broadcast station such as WXTV to elect carriage on its over the air channel is explicitly set forth in Section 76.57 of the Commission's rules, which simply implements the Congressional mandate. 47 C.F.R. § 76.57. See Report and Order on Implementation of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 2965 (1993), at ¶¶ 83-91. To the extent that Mr. Dolan and Cablevision are unhappy with the state of the law, this is far too late a date to complain. At best, Mr. Dolan's complaints represent an informal request for reconsideration of the Commission's 1993 decision implementing Section 614(b)(6). The time for filing such a complaint expired years ago. Even if that were not the case, however, such a complaint could not alter the Congressionally-mandated channel election rights set forth in Section 614.

Mr. Dolan complains that "[t]he only acceptable alternative [to carriage on Channel 41], in WXTV's view, was a premium channel position between channel 1 and channel 13 -- a channel position it has no legal right to." Univision concedes that it has no right to a VHF channel on the Cablevision systems, just as Cablevision has no right to refuse WXTV carriage on Channel 41. However, given Cablevision's continuing refusal to comply with WXTV's carriage

rights, and the delay and expense of enforcing those rights, Univision has sought to allow Cablevision some flexibility by suggesting acceptable alternative cable channels for carriage of WXTV. Despite Mr. Dolan's pleas, Univision believes that the only reasonable alternative to its entitled carriage on Channel 41 -- which it has spent years and millions of dollars promoting -- is carriage on a premium VHF channel. Not only is this a rational response -- allowing Cablevision *fourteen* channels from which to choose so as to minimize disruption to Cablevision's systems -- but it is also a very honest attempt by Univision to meet Cablevision halfway, and avoid taxing the Commission's resources. As evidenced by Mr. Dolan's letter, however, Cablevision sees compliance with the law as an unnecessary economic burden, and Univision's efforts to offer a flexible compromise as an unreasonable demand.

Mr. Dolan claims that moving WXTV to Channel 41 "would, for many systems, require Cablevision to incur substantial uncompensated costs" that, overall, "would approach 4 million dollars." First, Univision does not accept these unsubstantiated and undocumented figures. In any event, however, even Mr. Dolan's own words demonstrate that this objection applies only to *some* Cablevision systems, effectively conceding that there would *not* be substantial costs in moving WXTV to Channel 41 on other Cablevision systems. No explanation is given as to why Cablevision has not moved WXTV to Channel 41 on these other systems. Moreover, since Univision's initial election letter in 1993, Cablevision has undertaken rebuilds, expansions, and channel positioning changes on many, if not all, of its New York ADI systems. Cablevision could, and should, have moved WXTV to Channel 41 when those changes were made, thereby eliminating the need to incur further costs now to comply with WXTV's channel positioning rights. Thus, if there are any significant costs that now need to be incurred by Cablevision to place WXTV on Channel 41 of Cablevision's systems in the New York ADI, those costs are largely self-inflicted.

Mr. Dolan's letter states his concern that carriage of WXTV on Channel 41 would disrupt Cablevision's plan to reorganize its channel lineups to create discrete programming blocks. Such cable programming concepts were well established by the time Section 614(b)(6) was debated and adopted, however, and Congress nonetheless chose to create the current system of channel positioning rights. Congress recognized the fact that viewers correlate television stations with their channel numbers. Mr. Dolan's stated concern for consumers' convenience fails to note that viewers are certainly inconvenienced by having to look all over their cable system's channel lineup to find a particular program or news story advertised as appearing on Channel 41 when Cablevision has capriciously moved WXTV to another channel. This inconvenience is compounded when a viewer may find WXTV on one channel at her home, on another channel at her workplace, and on another channel at a relative's house, even though all are served by Cablevision systems.

Mr. Dolan's actual intent in drafting his letter can be found in the letter's penultimate paragraph, where, ignoring that the issue before the Cable Services Bureau is WXTV's cable channel position and not its must-carry status, Mr. Dolan complains greatly about "the *uncompensated* nature of the carriage" (emphasis in the original). Univision does not, however, believe that it would serve any real purpose to reargue mandatory must-carry at this late date.

Suffice it to say that it is the law of the land, adopted by Congress, implemented by the Commission, ratified by the United States Supreme Court, and binding on Cablevision.

Finally, in addition to addressing Mr. Dolan's direct complaints, Univision would like to raise one issue that underlies this entire matter -- an issue that *is* within the power of the Commission to address. That issue is the failure of the Commission's Rules to have any real teeth in dealing with the consistent refusal of major cable operators to comply with the law. The cable industry knows that they can delay and dawdle, claim to cooperate and refuse to compromise, all the time putting off the day on which they must do what they are legally obligated to do. The cable industry knows well that if they drag their feet, delay, appeal, and generally ignore the law, the worst that will happen is that they will eventually be ordered to do what they were supposed to be doing all along. Univision repeatedly has been faced with this "say anything to stall but never comply" approach by cable operators. If a broadcaster were to take this cavalier approach to compliance with the Commission's Rules and the Communications Act, it would face massive monetary forfeitures and loss of its license.

Univision submits that it is time for the Commission to make an example of intransigent cable operators such as Cablevision, and to assess a major forfeiture for the violations of the Commission's Rules and the Communications Act that are at issue in this proceeding. Perhaps when the cost of non-compliance becomes more economically burdensome than the cost of compliance, companies such as Cablevision will finally give their legal obligations the serious attention they deserve.

Thank you for your consideration of Univision's views in this matter.

Sincerely,

  
Henry G. Cisneros

cc: Commissioner Harold Furchgott-Roth  
Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Gloria Tristani  
Kathryn Brown, Chief of Staff  
Deborah Lathen, Chief, Cable Services Bureau  
Charles F. Dolan  
Tara M. Corvo, Esq.